

LEVY RATNER, P.C.
Attorneys at Law
80 Eighth Avenue, 8th Floor
New York, New York 10011-5126

Telephone (212) 627-8100
Telecopier (212) 627-8182

www.levyratner.com

Richard A. Levy
Daniel J. Ratner
Daniel Engelstein^o
Gwynne A. Wilcox^Δ
Pamela Jeffrey
Owen M. Rumelt
Kevin Finnegan
Carl J. Levine^Δ
David Slutsky^Δ
Allyson L. Belovin
Suzanne Hepner^{*}

Dana E. Lossia^Δ
Susan J. Cameron^Δ
Micah Wissinger^{*}
Ryan J. Barbur
Vanessa Flores^Δ
Alexander Rabb
Nicole Grunfeld

Senior Counsel:
Richard Dorn
Robert H. Stroup

Counsel:
Paul Schachter^Δ
Anthony DiCaprio
Michael Steven Smith
David P. Horowitz[†]

February 4, 2010

Hon. Nicholas G. Garaufis, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: U.S.A., et al v. City of New York
Civ. Action No. 07-cv-2067 (NGG) (RLM)

Dear Judge Garaufis:

I write on behalf of the Vulcan Society and the individual plaintiffs-intervenors in opposition to the request by the Uniformed Fire Officers Association, Local 854, IAFF, AFL-CIO ("UFOA") to appear *amicus curiae*.

We are concerned with the multiplication of pressures brought to bear on the Court by parties who have little or, in this case, nothing to add to the important issues the Court is deciding. The Vulcan Society, the Department of Justice, the City, and obviously the Court itself share a deep concern for the safety of all firefighters of all ranks. The Uniformed Firefighters Association ("UFA") is already in the case as an amicus, purportedly to protect the same interests claimed by the UFOA, including that of safety.

The UFOA purports to have special knowledge of the "skills which are required to function effectively as a Firefighter...". In the past, the City has drawn on the perspective of Lieutenants and Captains as well as rank and file firefighters to try to measure the important abilities required on the job. (Of course, as the Court has found, for the most part the City has not tested for the most important skills and abilities.) Any new test that is put in place as a result of this lawsuit will be developed by the City and the Justice Department and will employ skilled professional I.O. psychologists who will determine – in consultation with firefighters at all levels – the important skills, abilities and characteristics for the job and how they can best be measured. The UFOA, an almost exclusively white supervisors organization, is not likely to add additional dimensions to that study.

Hon. Nicholas G. Garaufis
February 4, 2010
Page 2

Their concern about the on-the-job years required for promotion is completely unwarranted. As the Court is aware, the Vulcan Intervenors as well as the Department of Justice have taken the position that time in the grade requirements (the 3 and 5 years referred to in Mr. Bethel's letter) should not be affected by the award of competitive seniority. The UFA has already presented this position and no one in the case is arguing to the contrary.

The only other claim asserted to give the UFOA standing is that the seniority rights of its members may be affected. This, of course, is true – though it is years away as a practical matter. But that issue has already been decided by the Court in awarding competitive seniority to the 293 priority hires who represent the number of blacks and Hispanics who would have been hired but for the City's use of biased exams.

All in all, the addition of another *amicus* will not expand, but more likely will encumber this proceeding at this time. Of course, at the time of the Fairness Hearing the UFOA will have an opportunity to raise objections on behalf of its members.

Respectfully submitted,

LEVY RATNER, P.C.



Richard A. Levy

RAL:lbg

TO: All counsel via ECF.